



音樂出版人協會
香港有限公司
MUSIC
PUBLISHERS
ASSOCIATION
OF
HONG KONG
LIMITED

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Submission in response to the Copyright and Artificial Intelligence Public Consultation Paper

INTRODUCTION

Music Publishers Association of Hong Kong Limited ("MPA") was formed in 1981 with the aim of protecting interests of music publishers locally. It consists of members (Appendix I) representing both international and local repertoire which cover the vast majority of musical works being exploited in the territory. Music publishers own, control or administer the intellectual property constituted in songs, other musical compositions and their associated lyrics. MPA is in a unique position in the Hong Kong music industry to comment on the potential impact on any change to the Copyright Ordinance ("CO").

It is timely for the Government to issue a consultation document on Artificial Intelligence ("AI") in relation to copyright which is such an important topic that is under vigorous review by governments worldwide and would change the landscape of the creative industry in the future.

MPA welcome the opportunity to comment on the Consultation in relation to the development of AI and its potential impact on our music industry. We address those questions relevant to our industry in the Consultation Paper to which we hope we can share the industry's views in our perspectives. An executive summary is also provided to conclude our comments.

EXECUTIVE SUMMARY

MPA's demand on AI is simple. "Consent, compensation and transparency."

The publishing community embraces new technological development that would help thrive the creative industries in Hong Kong but at the same time would not weaken the protection of copyright and diminish the value of the intangible assets controlled by copyright owners.

When AI companies ingest copyrighted music data for their system to train on, prior authorization should be obtained through an input license from copyright owners. Data ingested should be tagged and labelled for identification and transparency purposes. Output license should also be obtained as the ultimate product would be offered to users often with a fee. Contributors to the dataset should be entitled to a share of the revenue. Copyrightability of the music created via these AI engines depends if there is human authorship. While it is still controversial as to how much human input is necessary to warrant copyright protection, the general consensus in the music industry is that pure generative-AI music (without creative input of human author) should not enjoy copyright protection, as it would unfairly compete with human created contents.

For decades publishers have worked with copyright users in different fields and in recent years with digital service providers to establish licensing models and agreements that cover all kinds of usage and all genres of works in the marketplace. We are convinced that free market negotiations and licensing are the most effective ways for users to obtain authorization to use our copyrighted music. There is no licensing market failure to correct.

MPA opposes any form of TDM exception which contradicts the exclusive rights of the copyright owner set forth in the CO. Once data is ingested, it is basically impossible to be retracted. Licensing schemes and models are available to tackle authorization issues and lawful access to our data should be assured.

The so-called 'opt-out' regime intended to balance between the legitimate interests of copyright owners and users is problematic. While we could not predict the number of licensees and the resources required to identify and assess each of them, we are fairly certain that the burden on copyright owners would be substantial.

Globally, the music publishing communities, copyright organizations and many other companies in the creative fields have participated in initiatives aiming to voice out the concerns and demands in this era of AI revolution to the music industry. The following links serve as reference with further details.

<https://rightsandai.com/en/>

<https://www.humanartistrycampaign.com/>

To conclude, MPA support the government to review the existing copyright law to consider effective measures, if necessary, to protect copyright owners' legal interests in this rapidly changing landscape triggered by this wave of AI technology advancement.

COMMENTS ON RELEVANT QUESTIONS IN THE CONSULTATION

□ Do you agree that the existing CO offers adequate protection to AI-generated works, thereby encouraging creativity and its investment, as well as the usage, development, and investment in AI technology? If you consider it necessary to introduce any statutory enhancement or clarification, please provide details with justifications.

MPA is of the opinion that the existing CO” is well-equipped to address most of the AI issues as its technology develops and being applied in the market. Any change in law such as allowing exceptions or fair use would create uncertainty and unfairness to copyright owners whose exclusive rights are now protected under the law.

For pure AI-generated works, transparency is the key. Tagging and labelling are necessary means to identify and record what data the AI-models have used to train on and to disclose that the output is AI-generated with sufficient details for tracking and training license purposes. Amendments on this regards should be considered.

□ Have you relied on the CGWs provisions of the CO in the course of claiming copyright protection for AI-generated works? If so, in what circumstances, how and to what extent has human authorship featured in these works? Have you experienced any challenges or disputes during the process?

The existing provisions on AI-generated LDMA works (as defined under Chapter 2(A) of the Public Consultation Paper) is worrying as generative-AI works are copyrightable according to CO, which contradicts with most jurisdictions such EU, US, China etc. where the laws stipulate or cases have been established that works without human originality should not enjoy copyright protection. Having said that, we would also caution against over-restricted regulations that do not support authors who utilize AI tools to create copyrightable works.

□ Do you agree that the contractual arrangements in the market provide a practical solution for addressing copyright issues concerning AI-generated works? Please elaborate on your views with supporting facts and justifications.

For years, MPA and its member publishers have worked with digital service providers and copyright users to establish licensing models and agreements covering thousands of contracts and vast majority of copyrighted music in the market. Negotiations are effective with users of all sizes. The same models can be applied to AI companies seeking to obtain “input” licenses to train their AI.

“Output” licenses are even more worth exploring as the final product trained on copyrighted music might be marketed to the public for a fee. Copyright owners should be compensated for such use. Currently, some AI developers use unauthorized tracks encompassing our musical works for training and offering subscription services to their products worldwide including Hong Kong for a fee which include the generation of music with specific prompts from users. Not only are these AI developers claiming fair use to escape liabilities, they are making monies globally without compensating copyright owners.

MPA believe the rights for our members to license these outputs freely should be addressed properly.

Do you agree that the existing law is broad and general enough for addressing the liability issues on copyright infringement arising from AI-generated works based on the individual circumstances? If you consider it necessary to introduce any statutory enhancement or clarification, please provide details with justifications.

MPA basically agree that the existing law is broad and general enough for addressing the liability issues on copyright infringement arising from AI-generated works. However, requirements for AI developers to be transparent should be introduced to mitigate liability issues.

Do you agree that the availability of contractual terms between AI system owners and end-users for governing AI-generated works also offers a concrete and practical basis for resolving disputes over copyright infringements in relation to these works? If not, could you share your own experience?

Referring to the answer to the third question above, it depends if the ‘input’ and ‘output’ licenses between AI system owners and copyright owners are in place. The subsequent music created by the AI engine could be subject to disputes and infringement claims.

What further justifications and information can be adduced to support (or roll back) the idea of introducing the Proposed TDM Exception into the CO with a view to incentivising the use and development of AI technology and pursuing overall benefits?

MPA opposes any form of TDM exception which contradicts the exclusive rights of the copyright owner set forth in the CO. Once ingested by AI developers, the copyright material could not be retracted. Free market licensing is the most effective way for granting lawful access to creators’ contents. ‘Opt-in’ is the default regime of licensing copyright. For decades, music publishers have been able to effectively negotiate deals not only on financial terms but very complex data and reporting requirements. There is no licensing market failure to correct.

It is in particular alarming where an exception would allow commercial AI developers to use protected content without authorization for the purpose of creating new content that competes with the human-created materials that the AI system was trained on and dilutes the value of our catalogue.

Is copyright licensing commonly available for TDM activities? If so, in respect of which fields/industries do these licensing schemes accommodate? Do you find the licensing solution effective?

Negotiations for TDM activities licensing have been going on globally. As mentioned earlier, licensing is the only and most effective way of authorising use of copyright content protected under the CO.

What conditions do you think the Proposed TDM Exception should be accompanied with, for the objective of striking a proper balance between the legitimate interests of copyright owners and copyright users, and serving the best interest of Hong Kong? Are there any practical difficulties in complying with the conditions?

In all cases, MPA opposes the so-called 'opt-out' regime being considered by the government and adopted by some other jurisdictions. It is unnecessary as free market licensing is a proven solution to meet the needs of the evolving market. Over many years, the music industry has developed licensing models on a purely opt-in basis eventually covering a vast majority of licensees and copyright owners.

We believe that such an opt-out process would be especially disadvantageous to small and medium-sized music publishers and songwriters. While we could not predict the number of licensees and the resources required to identify and assess each of them, we are fairly certain that the burden on copyright owners would be substantial. It is also unsure how this kind of system could be implemented in an efficient and effective way.

Appendix I

| MPA Members - 2024 | |
|---------------------------|--|
| 1 | ACCELA Entertainment Limited (formerly Sun Entertainment Publishing Limited) |
| 2 | Better Music Publishing Limited |
| 3 | BMA Music Publishing Limited |
| 4 | BMG Rights Management (Hong Kong) Ltd |
| 5 | BMG Production Music (Hong Kong) |
| 6 | Capital Artists Limited |
| 7 | Chance Music Limited |
| 8 | Crown Music Publishing (HK) Limited |
| 9 | EEG Music Publishing Limited |
| 10 | EMI Music Publishing Hong Kong |
| 11 | Fujipacific Music (S.E. Asia) Limited |
| 12 | Hugo Productions (HK) Limited |
| 13 | Kobalt Music Publishing Asia Limited |
| 14 | Media Asia Music Publishing Limited |
| 15 | Music Nation Publishing Company Limited |
| 16 | One Asia Music Hong Kong Limited |
| 17 | P & P Music |
| 18 | peermusic (S.E. Asia) Limited |
| 19 | Sony Music Publishing (Hong Kong) Limited |
| 20 | Stars Shine Music Publishing Limited |
| 21 | Sun Fung Music Publishing Limited |
| 22 | Touch Music Publishing (HK) Limited |
| 23 | Universal Music Publishing Limited |
| 24 | Universal Production Music Asia |
| 25 | Warner Chappell Music, Hong Kong Limited |
| 26 | Wing Hang Music Publishing Company Limited |
| 27 | Wise Music Hong Kong Limited |
| 28 | Worldstar Music International Limited |